IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Devi Singh Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.990/2006

DATE OF ORDER :: November 23, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Suresh Kumbhat, for the petitioner.
Mr.Ashok Upadhyaya, P.P.
Mr.Yashwant Mehta for complainant- non-petitioner No.2.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt. 3.6.2006 passed by the Sessions Judge, Pali (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dt. 10.3.2006 passed by the Chief Judicial Magistrate, Pali (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the petitioner, Public

Prosecutor and the counsel appearing for the complainant-non-petitioner No.2., Commissioner Municipal Council, Pali Carefully gone through the orders passed by both the courts below. I have also gone through the order dt. 23.12.2005 passed by the District Judge, Pali in Civil Appeal No.05/05 against the non-petitioner No.2.

It is contended by the learned counsel for the petitioner that the petitioner has been in possession of the plot in question since 1975. The said plot was purchased by the petitioner by an agreement from one Radheyshyam. Apprehending the forceful possession by the non-petitioner No.2, the petitioner filed a civil suit before the Civil Court, Pali. Along with the civil suit, the petitioner filed an application under Order 39 Rule 1 read with section 151 CPC being misc. case No.22/2005. The civil court granted temporary injunction in favour of the petitioner restraining the complainant-non-petitioner No.2 from interfering the petitioner's possession. However, ultimately, on 15.3.2005, the application seeking temporary injunction was dismissed. As against the order of Civil Judge dt. 15.3.2005, he has filed an appeal before the Court of District Judge, Pali being Civil Appeal No.5/2005. The District Judge granted the interim order in favour of the petitioner and ultimately, the petitioner succeeded in appeal and the appeal filed by the petitioner was allowed by

order dt. 3.12.2005 by taking into account every piece of evidence available before the District Judge. The finding of the civil court is binding on the criminal court. The District Judge has considered the matter at length and held that since 1975, the petitioner is in possession of the plot and residing thereon except a symbolic dispossession on 16.3.2005 and 17.3.2005. The District Judge appointed the Commissioner on. 17.3.2005 and relying on the report of the Commissioner showing petitioner's continuous possession over the plot in question and other reliable evidence available on record, the District Judge came to the conclusion that the petitioner is in possession of the plot in question for last thirty years. The complainant Municipality came with a case that they dispossessed the petitioner after vacation of the temporary injunction by dismissing the application filed under Order 39 Rule 1 read with 151 C.P.C. on 15.3.2005. The non-petitioner No.2 dispossessed the petitioner on 16.3.2005 and installed thereon a signboard. Be that as it may, in my view the District Judge rightly observed in the order that it was symbolic dispossession. In fact, the petitioner has not been completely dispossessed from the plot in question and, therefore, it cannot be said that the petitioner has committed criminal trespass or the offence of theft by taking away the alleged signboard of Municipality. In this view of the matter, the order framing charge against the petitioner for

committing the criminal trespass as also the offence of theft by taking away the signboard of the Municipality is prima facie not made out.

In the light of the material available on record, I do not find any ground to presume that the petitioner committed the offence for which he has been charged and, therefore, to allow the order framing charge to stand and the proceedings in furtherance thereof is nothing but abuse of process of the court and, therefore, to secure the ends of justice, the order impugned deserves to be set aside.

In the result, the petition is allowed. Order dt. 10.03.2006 passed by the Chief Judicial Magistrate, Pali and the order dt. 3.6.2006 passed by the Sessions Judge, Pali are set aside. The petitioner is discharged of the offence under sections 379 and 447 I.P.C.

[H.R.PANWAR],J.

m.asif/-